



**Colorado
Legislative
Council
Staff**

HB17-1200

**FINAL
FISCAL NOTE**

FISCAL IMPACT: State Local Statutory Public Entity Conditional No Fiscal Impact

Drafting Number: LLS 17-0766 **Date:** August 4, 2017
Prime Sponsor(s): Rep. Wist; Gray **Bill Status:** Signed into Law
 Sen. Tate; Kefalas **Fiscal Analyst:** Anna Gerstle (303-866-4375)

BILL TOPIC: UPDATE PUBLIC BENEFIT CORPORATION REQUIREMENTS

Fiscal Impact Summary	FY 2017-2018	FY 2018-2019
State Revenue Cash Funds	Potential minimal increase.	
State Expenditures Cash Funds	<u>\$30,488</u> 30,488	Potential minimal workload increase.
Appropriation Required: \$30,488 - Department of State (FY 2017-18).		
Future Year Impacts: Ongoing potential minimal revenue and workload increase.		

Summary of Legislation

The bill makes changes to state law related to public benefit corporations. Currently, a domestic cooperative may operate as a public benefit corporation as long as certain criteria are met. The bill allows limited cooperative associations to also operate as public benefit corporations.

The bill requires that a public benefit corporation obtain approval from two-thirds of their shareholders for transactions to opt out, through various means, of their status as a public benefit corporation, and clarifies the requirements for the annual report by a public benefit corporation.

In addition, under current law, the name of a public benefit corporation must contain the words public benefit corporation, or related abbreviations. The bill:

- makes the name requirement optional;
- specifies that certain words or abbreviations related to public benefit corporations may only be used by corporations and cooperatives organized as a public benefit corporation under state law; and
- specifies that if its name does not include public benefit corporation or related abbreviations, the public benefit corporation must provide notice to any person who is issued stock or acquires treasury shares that the company is a public benefit corporation prior to the issuance of stocks or disposal of treasury shares, with certain exceptions.

Background

Public benefit corporations. Colorado law defines a public benefit corporation as a for-profit corporation or domestic cooperative that is intended to produce a public benefit and to operate in a responsible and sustainable manner. As of February 2017, there are 732 public benefit corporations registered with the Secretary of State's Office (SOS), of which 524 are in good standing. Of all registered public benefit corporations, 5 are cooperative associations, 8 are cooperatives, and 719 are corporations.

Limited cooperative association. A limited cooperative association is an autonomous, unincorporated association of persons intended to meet their mutual interests through a jointly owned enterprise. The enterprise must be controlled primarily by those persons (members), and must allow the combining of ownership and receipt of benefits by the members whose interests the cooperative is intended to meet with separate investments by investors who receive a return on their investments and a share of control. As of February 2017, there are 102 limited cooperative associations registered with the SOS, of which 52 are in good standing.

State Revenue

The bill may increase revenue to the Department of State Cash Fund in the SOS by a minimal amount. To the extent that limited cooperative associations convert to public benefit corporations or new public benefit corporations are registered as a result of the bill, the number of transactions processed by the SOS may increase. Transaction fees are the same for both business types, but the fee to change business types varies based on the whether the public benefit corporation is created through an amendment, merger, or conversion. Any revenue increase is expected to be minimal.

State Expenditures

For FY 2017-18 only, the bill increases state expenditures in the SOS by \$30,488, paid from the Department of State Cash Fund. The bill also may increase the workload in the SOS and Judicial Department beginning in FY 2017-18, as discussed below.

Secretary of State's Office. The SOS requires \$30,488 in FY 2017-18 to modify the online filing system to allow limited cooperatives to file as public benefit corporations and to allow for additional naming flexibility in the system. The fiscal note assumes 296 hours of programming time at \$103 per hour.

The bill also increases the workload for the SOS to update materials, and may increase the workload for the SOS process additional transactions if limited cooperative associations file as public benefit corporations or new public benefit corporations are registered as a result of the bill. Any increase in workload is expected to be minimal and can be accomplished within existing appropriations.

Judicial Department. The bill may increase the number of court cases in the Judicial Department beginning in FY 2017-18. If a shareholder opposes a transaction to opt out of status as a public benefit corporation and has not voted in favor of the change, he or she may request payment for his or her shares. A corporation may petition the court to determine fair value of the shares plus interest. The fiscal note assumes that any increase in cases as a result of the bill will be minimal and can be accomplished within existing appropriations.

Effective Date

The bill was signed into law by the Governor on June 6, 2017, and takes effect August 9, 2017, assuming no referendum petition is filed. The bill applies to conduct occurring on or after the effective date.

State Appropriations

Consistent with this fiscal note, the bill includes an appropriation of \$30,488 from the Department of State Cash Fund to the Department of State for FY 2017-18.

State and Local Government Contacts

Information Technology
Regulatory Agencies

Judicial
Secretary of State

Law